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**Patterson Belknap Webb & Tyler LLP**

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 fax 212.336.2222 www.pbwt.com

February 3, 2012

**By E-Mail**

The Honorable Paul A. Crotty  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

Philip R. Forlenza  
Partner  
(212) 336-2140  
Direct Fax (212) 336-2094  
prforlenza@pbwt.com

2/6/2012

*The method for bringing these disputes  
to the Court for resolution, as well as the  
schedule are adopted  
so advised  
Paul/Mitch*

**Re: Syncora Guarantee Inc. v. EMC Mortgage Corporation**  
**Index No. 09 CV 3106 (PAC)**

Dear Judge Crotty:

We represent Plaintiff Syncora Guarantee Inc. ("Syncora") in the above-referenced action, and we write on behalf of both parties regarding several outstanding discovery disputes. The parties have conferred but have been unable to resolve their disputes with respect to the issues identified below. The parties therefore jointly request leave to seek a resolution of their disputes by the Court. Below, we have identified the respective issues (without providing argument) that each party seeks to submit to Your Honor for resolution.<sup>1</sup>

Both parties are mindful that the March 16 deadline for fact discovery is only six weeks away, and have therefore agreed, subject to Your Honor's approval, to a letter-briefing procedure in lieu of formal motion practice, as well as a tight briefing schedule that will facilitate Your Honor's ability to resolve the parties' disputes before March 16. The parties' proposed procedure is described at the end of this letter.

**Issues To Be Presented by EMC**

- Documents/Testimony Pertaining to Forensic Review of Mortgage Loans: EMC will seek an order compelling discovery (document demands, interrogatories and 30(b)(6) testimony) concerning the loan re-underwriting and review performed by Syncora in advance of commencing this litigation, as alleged in various paragraphs of its Complaint. At issue is whether materials and communications pertaining to that review, which Syncora contends was performed by a third-party

<sup>1</sup> Though it is the parties' hope that we will not require further Court intervention beyond these issues, both parties reserve the right to bring additional issues to the Court's attention if necessary. In addition, both parties anticipate that we may need to seek Court intervention with respect to certain third-party subpoenas.

MEMO ENDORSED

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consultant retained by Syncora's counsel in anticipation of this litigation, are protected by the work product doctrine and attorney-client privilege, even though the results of that review were disclosed in the Complaint.

- Syncora's Sampling Methodology for Pre-Litigation Loan Reviews: EMC will seek an order compelling Syncora to produce documents and answer interrogatories relating to the methodology used by Syncora to select the random and adverse samples alleged in its Complaint.
- Documents Pertaining to Syncora's March 2007 Stress Analyses of its HELOC Portfolio: EMC will seek an order compelling Syncora to produce documents relating to the March 2007 stress analyses and loss estimate calculations that Syncora performed on certain of its other home equity lines of credit ("HELOC") transactions at approximately the same time as it decided to insure the HELOC transaction at issue in this case (the "Transaction"), which EMC contends it only recently learned about based upon its review of the *Syncora v. Countrywide* transcripts and exhibits produced by Syncora pursuant to Your Honor's September 15 order.
- Documents/Testimony Sufficient To Show Syncora's Losses on Other RMBS Deals: EMC will seek an order compelling the production of documents and/or 30(b)(6) testimony sufficient to show (i) all the RMBS deals that Syncora participated in from 2004 through 2008 and (ii) for that same time period, in both aggregate for its RMBS business and for each RMBS deal individually, Syncora's (a) revenue, (b) losses and (c) the number and amount of repurchase claims made by Syncora.
- Supplementation of the Factual Record Through Expert Discovery: EMC will seek an order precluding Syncora from offering at trial any factual information in support of its claims, including through expert witnesses, that was available but not disclosed during fact discovery.
- Discovery Relating to Damages: EMC will seek an order compelling Syncora to respond in full to EMC's interrogatories concerning Syncora's damages, including the amount and methodology for calculating damages and the factual bases for Syncora's damages theories. EMC will also seek all documents concerning any mitigation efforts by Syncora with respect to its claimed damages, including documents relating to the 2009 tender offer of residential mortgage-backed securities insured by Syncora as it relates to the Transaction.
- Communications With Reinsurers About the Transaction: EMC will seek an order compelling production of pre- and post-closing communications between Syncora and its reinsurers pertaining to the Transaction, including communications concerning the risks or performance of the Transaction.

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- Underwriting Guidelines: Syncora has produced the version of its underwriting guidelines that was in effect at the time of the Transaction. EMC will seek an order compelling production of prior versions of Syncora's underwriting guidelines going back to 2004.

**Issues to be Presented by Syncora**

- Responsive Documents From the Files of Leslie Rodriguez: Syncora will seek an order compelling EMC to produce documents from the files of Leslie Rodriguez, who Syncora believes is a relevant custodian based on its review of transcripts recently produced by EMC pursuant to Your Honor's October 12 Order.
- Responsive Documents From the Files of Mark Arvizu: Syncora will seek an order compelling EMC to produce documents from the files of Mark Arvizu, who Syncora believes is a relevant custodian based on his January 7 deposition testimony.
- Documents Sufficient to Show the Moneys Paid and Received by EMC: Syncora will seek an order compelling the production of documents sufficient to show the moneys paid and received by EMC and its affiliates in connection with effectuating and closing the Transaction.
- Documents Concerning the Negotiation, Resolution or Settlement of any Claims by EMC Against GreenPoint: Syncora will seek an order compelling production of documents concerning the negotiation, resolution or settlement of any claims made by EMC against GreenPoint involving any Mortgage Loan in the Transaction, and the accounting treatment and allocation of funds recovered by EMC in connection with those claims, including documentation concerning GreenPoint's repurchase of Mortgage Loans after the Transaction's closing.

**The Parties' Proposed Procedure for Resolution**

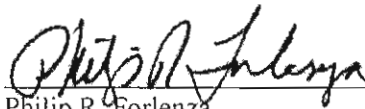
In the interests of efficiency, the parties have agreed, subject to Your Honor's approval, to forego formal motion practice, and instead, to submit their respective disputes to the Court through a series of letter "briefs." The parties propose that the party seeking production of materials file a single letter brief addressing all disputed issues, and the party opposing production file a single opposition letter on the same issues. In other words, the parties envision that they each will submit one moving and one opposition letter. The parties propose a page limit of not more than 10 single-spaced pages for both moving and opposition letters. To facilitate Your Honor's ability to resolve the parties' disputes prior to the March 16 deadline for fact discovery, the parties propose the following briefing schedule:

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Moving letters: **February 10, 2012**

Opposition letters: **February 24, 2012**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip R. Forlenza", is written over a horizontal line.

Philip R. Forlenza  
Patterson Belknap Webb & Tyler LLP  
*Attorneys for Plaintiff Syncora Guarantee Inc.*

cc: Robert Sacks, Esq.  
Eric N. Whitney, Esq.